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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF "E4" CLAIMS

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CONTENTS

	Paragraphs	Page
Introduction	1 - 3	4
I. OVERVIEW OF THE THIRD INSTALMENT CLAIMS	4 - 6	4
II. THE PROCEEDINGS	7 - 19	4
III. LEGAL FRAMEWORK	20	7
IV. VERIFICATION AND VALUATION OF CLAIMS	21	7
V. CONSIDERATION OF COMMON LEGAL AND FACTUAL ISSUES	22 - 80	7
A. Approach	22	7
B. Losses incurred by Kuwaiti banks on the sale of assets	23 - 26	8
C. Losses incurred in connection with cancelled Kuwaiti dinar banknotes	27 - 31	9
D Losses arising from movements in currency exchange rates	32 - 53	10
E. Losses arising from loans to Rafidain Bank	54 - 70	15
F. Losses arising from monies held on deposit in Iraq	71 - 74	18
G. Losses arising from overseas operations	75 - 77	19
H. Losses arising from visa card transactions	78 - 80	19
VI. THE CLAIMS	81 - 162	20
A. Contract	82 - 88	20
1. Compensability	85	21
2. Verification and valuation method	86	21
3. Evidence submitted	87 - 88	21
B. Real property	89 - 96	21
1. Compensability	90 - 91	22
2. Verification and valuation method	92	22
3. Evidence submitted	93 - 96	22
C. Tangible property	97 - 113	23
1. Compensability	98 - 99	23
2. Verification and valuation method	100	23
3. Evidence submitted	101 - 113	24
(a) Tangible property	101 - 102	24
(b) Stock	103 - 104	24
(c) Cash	105 - 109	24
(d) Vehicles	110 - 113	25
D. Income-producing property	114 - 116	26
E. Payment or relief to others	117 - 122	26
1. Compensability	118 - 119	27
2. Verification and valuation method	120	27

3. Evidence submitted . . . . . 121 - 122 27
F. Loss of profits . . . . . 123 - 135 28
1. Compensability . . . . . 124 - 132 28
2. Verification and valuation method . . . 133 30
3. Evidence submitted . . . . . 134 - 135 30
G. Receivables . . . . . 136 - 145 30
1. Compensability . . . . . 137 - 141 30
2. Verification and valuation method . . . 142 32
3. Evidence submitted . . . . . 143 - 145 32
H. Restart costs . . . . . 146 - 148 32
I. Other losses . . . . . 149 - 162 33

VII. OTHER ISSUES . . . . . 163 - 164 36

A. Applicable dates for currency exchange rate and interest 163 36
B. Claim preparation costs 164 36

VIII. CORRECTION OF FIRST AND SECOND INSTALMENT CLAIMS 165 36

IX. RECOMMENDED AWARDS 166 37

Annexes

Annex I: Recommended awards for the third instalment of "E4" claims - Reported by UNSEQ and UNCC claim numbers and claimant name 38

Annex II: Recommended awards for the third instalment of "E4" claims - Reported by claimant name and category of loss 40

Annex III: Correction of recommended awards for the first and second instalment of "E4" claims 69

Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti entities, other than oil sector and environmental claims, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The third instalment of 20 "E4" claims was submitted to the Panel on 6 February 1999 in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the third instalment claims.

I. OVERVIEW OF THE THIRD INSTALMENT CLAIMS

4. The third instalment claims were selected from among the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claim, the legal, factual and valuation issues raised by the claim, the claimant's type of business activity and the date of filing of the claim with the Commission.

5. The third instalment claims allege losses aggregating Kuwaiti dinars ("KD") 537,834,961 (approximately US$1,861,020,626). The claims range between KD 3,023,112 and KD 175,202,000 (i.e., between approximately US$10,460,595 and US$606,235,294) in value. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the amount of compensation sought by the claimants, all of the claims in the third instalment are classified as "unusually large or complex" within the meaning of article 38(d) of the Rules.

6. All of the claimants in the third instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Many, but not all such claimants, were operating in the banking and financial services industry. Claimants in this instalment have sought compensation under all loss categories identified on Form E, except loss of business transaction or course of dealing.

II. THE PROCEEDINGS

7. Before the third instalment claims were submitted to the Panel, the secretariat undertook a complete review of the claims in accordance with the Rules. The secretariat first carried out a preliminary assessment of the claims, pursuant to article 14 of the Rules, to verify whether the claims met the formal requirements of paragraphs (1) and (2) of article 14.

For example, the claims were reviewed to ascertain whether they included proof of incorporation or organization under the laws of Kuwait on the date the claim arose, and contained an affirmation by the authorized official for each claimant that the information contained in the claim is correct. The results of this formal review were entered into a centralized database maintained by the secretariat (the "Claims Database").

8. Of the 20 claims included in the third instalment, two presented formal deficiencies. Accordingly, the secretariat issued notifications to both claimants, pursuant to article 15 of the Rules. The secretariat received two responses to these article 15 notifications, which responses remedied the formal deficiencies in both claims.

9. A substantive review of the third instalment claims was then undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

10. The Executive Secretary of the Commission submitted reports 24 and 25 dated 8 July 1998 and 13 October 1998 respectively, to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the third instalment of "E4" claims and presented the significant legal and factual issues identified in those claims. A number of Governments, including the Government of Iraq submitted additional information and views in response to the Executive Secretary's article 16 reports.

11. In addition to having access to narrative claim summaries for each claim in the third instalment, the Panel also requested specific information and documents from the claimants pursuant to article 34 of the Rules.

12. Accordingly, at the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents had been made available to the Panel for consideration:

(a) the claim documents submitted by the claimants;

(b) the preliminary assessment reports under article 14 of the Rules;

(c) narrative claim summaries and reports;

(d) further information and documentation provided by the claimants pursuant to specific requests made pursuant to article 34 of the Rules;

(d) information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(e) other information, such as legal briefing notes, deemed, under article 32 of the Rules, to be useful to the Panel for its work.

13. As described in paragraph 17 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"), the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the third instalment in accordance with the verification and valuation methodology developed by the Panel as outlined in the First "E4" Report and to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings. The methodology used by the Panel in the First "E4" Report is not restated in this report. Instead, this report makes reference to the First "E4" Report. Where the Panel encountered new issues not addressed in the First "E4" Report, the Panel developed additional methodologies for verifying and valuing those losses as described herein.

14. During the period from 26 April 1999 to 5 May 1999, at the direction of the Panel, members of the secretariat and expert accounting and loss adjusting consultants travelled to Kuwait to obtain information for the Panel's assessment of the claims and to carry out on-site inspections. Commissioner Alan Cleary was the member of the Panel who participated in the visit. The delegation met with governmental agencies, including the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") and the Central Bank of Kuwait. In addition, the members of the secretariat and the expert consultants met with all third instalment claimants.

15. By its first procedural order, dated 9 February 1999, the Panel gave notice of its intention to complete its review of the third instalment claims and submit its report and recommendations to the Governing Council within twelve months.

16. The Panel's first procedural order was transmitted to the Government of Iraq and the Government of Kuwait on 11 February 1999.

17. By its second procedural order dated 10 February 1999, the Panel instructed the secretariat to transmit the statement of claim and all other supporting documents filed by all third instalment claimants with claims greater than KD 30,000,000 (approximately US$100,000,000) to Iraq. The Panel invited the Government of Iraq to submit its response to these claims within 180 days of the date of the procedural order. Iraq submitted a written response to all seven such claims, which, in some cases raised specific issues. Each of the issues raised by Iraq has been considered by the Panel and some are specifically reflected in the Panel's findings set out below.

18. An additional level of verification was performed to determine if related claimants filed duplicate claims. On 8 May 1998, PAAC was asked to

identify the corporate affiliates of claimants that had also filed a claim with the Commission. Based on the information received from PAAC and the information available in the Claims Database, a review was conducted to ensure that related claimants did not file a claim for the same loss. This verification was performed on the entire E4 population, not just the third instalment claims.

19. Based on its review of the documents submitted, including responses to the procedural orders received from the Government of Iraq, the Panel concluded that the issues presented by the third instalment claims had been adequately developed and that oral proceedings to explore such issues further were not required.

III. LEGAL FRAMEWORK

20. The legal framework for the evaluation of the claims in the third instalment is identical to that used for the claims in the first instalment, as described in paragraphs 25-31 of the First "E4" Report.

IV. VERIFICATION AND VALUATION OF CLAIMS

21. The verification and valuation methodology applied by the Panel to the third instalment claims is the same as that used in the first instalment. (See the First "E4" Report, paras. 32-62.) As summarized in the First "E4" Report, the Panel's approach to the verification and valuation of claims balances the claimant's inability to always provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. The term "risk of overstatement", as defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated. As with the First "E4" Report, the Panel's treatment of certain claimants is highlighted in the body of this report.

V. CONSIDERATION OF COMMON LEGAL AND FACTUAL ISSUES

A. Approach

22. Due to the nature of the industry in which many of the third instalment claimants were involved, namely the provision of banking and financial services, the Panel encountered a number of legal and factual issues that had not arisen in its review of previous instalments of "E4" claims. Many of these issues are common to several claims. The Panel therefore finds it appropriate to resolve these issues initially, as set out below.

B. Losses incurred by Kuwaiti banks on the sale of assets

1. Background

23. All third instalment claimants operating in the Kuwaiti banking sector ceased operations in Kuwait immediately following Iraq's invasion. Most of these claimants explain that their banking operations were funded by the Kuwaiti domestic deposit base, and that access to these funds was no longer possible following Iraq's invasion and occupation of Kuwait. This resulted in a lack of sufficient liquidity on the part of Kuwaiti banks to settle obligations as they fell due, such as interest payments, inter-bank obligations and obligations arising out of documentary credit transactions. These claimants state that, as a result, they were compelled to sell financial assets that they held offshore, in order to settle outstanding obligations as they fell due and to maintain adequate levels of liquidity. The types of assets sold include syndicated loans, securities, bonds and warrants. The claimants allege that they suffered losses as a result of these transactions, and that such losses are a direct result of Iraq's invasion and occupation of Kuwait.

24. The transactions in question were carried out through the claimants' overseas branch offices. As a result of the United Nations trade embargo, permission was sought and obtained where necessary from the appropriate monetary authorities where the transactions were carried out, such as the Bank of England and the United States Federal Reserve Bank. Some claimants already had an overseas presence at the time of Iraq's invasion of Kuwait, whereas other claimants proceeded to set up overseas offices in locations such as London and New York during the occupation period. A full discussion of these overseas operations and claims for compensation arising therefrom are discussed in paragraphs 75-77 infra.

2. Compensability

25. The claims for losses on the sale of assets have certain common features, namely:

(a) the assets were sold in order to raise funds to meet liabilities due to other banks and to depositors in Kuwait;

(b) the losses have been quantified as the difference between either the value of the asset as recorded in the claimants' financial records ("the book value") and the sale value achieved, or the difference between the nominal (or face) value of the asset and the sale value achieved;

(c) the losses arose due to the market conditions prevailing in the period over which the sales took place, and hence the sale value achieved was usually below the book value or nominal value of the asset;

(d) claimants generally claim that they would have obtained full value for the assets concerned had they held them to maturity or sold them in better market conditions; and

(e) all claimants have confirmed that the sales were achieved at the market values prevailing at the date of sale.

26. The Panel finds that, while the need to sell assets by the claimants arose as a result of Iraq's invasion and occupation of Kuwait, none of the claimants could provide evidence to demonstrate that the amounts claimed, i.e., the difference between the book value or nominal value and the sale value of the asset, were losses directly resulting from Iraq's invasion and occupation of Kuwait. The Panel finds that any losses arising from such sales were due both to a failure on the part of the claimants to value their assets properly (by adjusting the book value of the assets to reflect their fair value in the period leading up to the date of the invasion), and to the market conditions prevailing in the period over which the sales took place. In the circumstances, the Panel finds that such claims are not compensable.

C. Losses incurred in connection with cancelled Kuwaiti dinar banknotes

27. A number of claimants, mostly Kuwaiti banks, seek compensation for losses suffered as a result of their receipt of cancelled Kuwaiti dinar banknotes. The Central Bank of Kuwait ("CBK") has refused to exchange the cancelled Kuwaiti dinar banknotes on the grounds that their serial numbers indicate that they are part of a batch of Kuwaiti dinar banknotes that were cancelled by the Government of Kuwait as a result of their misappropriation by Iraqi officials when they seized control of the CBK.

28. While this issue was dealt with in the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) ("the Second 'E4' Report"), the factual circumstances of the claims in the second instalment were different to those now before the Panel. In the second instalment claims, Kuwaiti co-operative societies that continued to trade during Iraq's invasion and occupation of Kuwait sought compensation for losses suffered as a result of the receipt of cancelled Kuwaiti dinar banknotes in return for the sale of their goods. The Panel found that such losses were compensable in principle.

29. In the third instalment claims, the cancelled Kuwaiti dinar banknotes were received by the claimants, in the majority of cases, directly from the CBK for circulation shortly before Iraq's invasion of Kuwait. From investigations made during the on-site visit to Kuwait, which included physical inspection of the notes, it was observed that, in many cases, the notes remained unopened in the original packaging in which they had been received by the claimants from the CBK. Many claimants confirmed that the CBK had debited the claimants' current accounts with the CBK for the value of the banknotes prior to Iraq's invasion. This indicates that the notes

which were held by claimants in their original packaging were not part of the batch stolen by the Iraqi officials from the CBK and therefore more notes were cancelled by the CBK than were actually stolen. In cases where the cancelled notes were not in their original packaging, it appears that they were received by claimants during the period of Iraq's invasion and occupation.

30. The Panel finds that losses arising from the cancellation of Kuwaiti dinar banknotes by the CBK, in circumstances where such notes were received by the claimants directly from the CBK prior to Iraq's invasion and occupation of Kuwait, arose as a result of administrative difficulties faced by the CBK in identifying the correct serial numbers of the stolen currency while operating in exile. The notes in question could not have been part of the currency which was misappropriated by Iraqi officials when they seized control of the CBK, because the currency had already been dispatched to the claimants by the CBK for circulation prior to Iraq's invasion of Kuwait and the notes were still held by the claimants in their original packaging upon liberation. Accordingly, the Panel finds that such losses are not compensable. The Panel distinguishes these claims, and the factual circumstances thereof, from the second instalment claims, where co-operative societies and other Kuwaiti businesses received the cancelled Kuwaiti banknotes in return for the provision of goods and services.

31. To the extent that claimants hold cancelled Kuwaiti dinar banknotes that were not received directly from the CBK prior to Iraq's invasion of Kuwait, losses arising from the receipt of such cancelled banknotes are compensable if such notes were received by claimants who continued to trade during Iraq's invasion and occupation of Kuwait, and the cancelled notes were received in return for the provision of goods and services (i.e., the factual circumstances are identical to those in the second instalment of "E4" claims). However, where such banknotes were received and deposited by Kuwaiti bank claimants during the period of Iraq's invasion and occupation of Kuwait, the Panel notes that such claimants have not suffered a loss thereby due to the fact that, upon liberation, all Kuwaiti bank accounts were reinstated to their positions immediately prior to Iraq's invasion and occupation of Kuwait.

D. Losses arising from movements in currency exchange rates

32. A number of claimants allege that they have suffered losses arising from movements in currency exchange rates, for example in connection with transactions such as currency options contracts and loan facilities granted in United States dollars by the CBK upon liberation.

33. Two claimants, Al Ahli Bank and Al Kuwait Real Estate Bank, allege that they suffered losses arising from exposure to fluctuations in foreign currency exchange rates, as a result of borrowing United States dollars from the CBK after the liberation of Kuwait. The claimants allege that, prior to the invasion, they maintained a fully matched foreign currency

position, i.e., they held foreign currency assets equal to their foreign currency liabilities.

34. One claimant, Al Ahli Bank, states that it borrowed approximately US$1.19 billion from the CBK in 1991, in order to meet liabilities that arose when customers and banks wished to withdraw their deposits with the claimant upon liberation. The claimant states that, due to the sale of its foreign assets (see paras. 23-26, supra), it had no alternative but to borrow funds from the CBK to meet its liabilities to customers upon liberation. The borrowings were used to repay a range of liabilities denominated principally in Kuwaiti dinars. The claimant suffered a loss in Kuwaiti dinars when the amount outstanding to the CBK in United States dollars was converted into Kuwaiti dinars in the claimant's financial statements for the year ending December 1992. In the period between the granting of the facility in 1991 and the preparation of the claimant's financial statements in 1992, the Kuwaiti dinar had depreciated against the United States dollar, resulting in an increased Kuwaiti dinar liability of the claimant to the CBK. A similar claim is advanced by Al Kuwait Real Estate Bank.

35. The Panel finds that, rather than resulting from Iraq's invasion and occupation of Kuwait, the losses claimed by Al Ahli Bank and Al Kuwait Real Estate Bank arose as a result of the movement in exchange rates between the United States dollar and the Kuwaiti dinar (in particular, the depreciation of the Kuwaiti dinar against the United States dollar), between the dates the loans were drawn down from the CBK and the dates upon which the losses were recorded in the claimants' financial statements. Further, such depreciation of the Kuwaiti dinar against the United States dollar took place in 1992 and 1993. Accordingly, the Panel finds that such losses are not compensable.

1. Options contracts

36. One claimant, the Industrial Bank of Kuwait ("IBK"), seeks compensation for foreign exchange losses arising out of currency options contracts that were current as at 2 August 1990. A currency option is the right, but not the obligation, to buy (known as a "call" option) or sell (known as a "put" option) a currency against delivery of another currency, at a specified rate (known as the "strike price") for a specified period of time, which ends at the expiry date. For this right, the buyer of the option pays a premium to the seller.

37. Prior to Iraq's invasion and occupation of Kuwait, IBK sold to Morgan Guaranty Trust ("MGT") a Pounds sterling call/dollar put option for an amount of GBP 2 million, at a strike price of 1GBP = US$1.8550. The option was due to expire on 30 August 1990. MGT chose to exercise the option on 20 August 1990, but IBK was unable to settle its obligations until 18 January 1991. IBK alleges that, as a result, it suffered a foreign exchange loss as exchange rates moved against it between August 1990, when MGT exercised the option, and January 1991, when it was able to settle its

obligations by purchasing the requisite amount of Pounds sterling at a price of 1GBP = US$1.95130. IBK seeks compensation for the foreign exchange losses incurred and, in particular, the increased cost of purchasing the Pounds sterling in January 1991.

38. The Panel finds that the loss incurred by the claimant arose from its inability to administer its operations in Kuwait after Iraq's invasion of Kuwait, and that such a loss is therefore a direct result of Iraq's invasion and occupation of Kuwait. As to the quantification of the loss, the Panel recommends an award based on the movement in the United States dollar/Pounds sterling exchange rate between the strike price and the date on which the transaction was finally settled by IBK. The Panel recommends that the claim be adjusted to offset any "risk of overstatement" arising from the fact that the claimant assumed a degree of risk beyond the strike price for a certain period of time.

39. IBK was also a party to a number of other matching options contracts that were current on 2 August 1990. Under the first contract, IBK bought a Japanese Yen call/United States dollar put option for US$2,000,000 from Citibank at a strike price of Japanese Yen 151. IBK then sold to Citibank a Japanese Yen call/United States dollar put option for US$1,000,000 at a strike price of Japanese Yen 151, leaving a net balance of US$1,000,000 open with Citibank. Finally, IBK sold to Arab Bank Corporation, Bahrain ("ABC") a Japanese Yen call/United States dollar put option for US$1,000,000 at a strike price of Japanese Yen 151. The net result of those transactions meant that if ABC exercised its right to pay IBK US$1,000,000 and receive Japanese Yen 151,000,000, IBK would have a similar right to pay the same United States dollar amounts and receive the same Japanese Yen amounts from Citibank. Hence, IBK had no net exposure, provided that it could exercise its option rights on Citibank. These transactions would normally result in a profit for IBK because the fees received on sales of the options were larger than the amount paid for the purchase.

40. ABC exercised its option on 16 August 1990. However, IBK could no longer exercise its rights on Citibank, which closed out its option with IBK upon payment of a premium. When IBK had to settle the deal after liberation, it had to buy Japanese Yen 151,000,000 at the current market rate of Japanese Yen 128.333. IBK therefore received US$1,000,000 but had to pay US$1,176,626 to purchase the requisite amount of Japanese Yen. IBK's claim is for the loss of US$176,000, representing the extra cost incurred in purchasing Japanese Yen to settle the transaction with ABC, less the premium it received from Citibank in closing out its option.

41. The Panel finds that the loss incurred by the claimant arose from its inability to administer its operations after Iraq's invasion of Kuwait, and in particular its inability to mitigate any potential loss resulting from the actions of ABC and Citibank when exercising their contractual rights under the options contracts. The Panel therefore finds that the loss incurred by IBK is compensable in the amount claimed.

42. Kuwait Finance House ("KFH") seeks compensation for losses incurred in connection with contracts for the sale and purchase of foreign currencies that were entered into on 31 July 1990. The contracts were matching exchange contracts rather than options, and therefore represented fixed commitments rather than contingent transactions that may or may not be exercised by one of the parties.

43. The claimant had two matching contracts in place on 31 July 1990, with settlement due to take place on 2 August 1990. The first contract was with Chemical Bank in New York to buy US$25 million for Japanese Yen at a rate of 146.18. The second contract was with Chase Manhattan Bank in Singapore to sell US$25 million for Japanese Yen at a rate of 147.42. The net effect of the transactions would be a profit to the claimant of Japanese Yen 31,000,000.

44. The evidence filed by the claimant shows that Chase Manhattan Bank considered itself as released from its obligations to the claimant under the second contract when the claimant failed to deposit the amount of US$25 million in Chase Manhattan's account. As a result, the contract with Chemical Bank remained open and unmatched, leaving the claimant with a purchase of US$25 million for Japanese Yen at 146.18. The claimant also states that it was only able to identify this problem in late March 1991, at which time it attempted to get Chase Manhattan to reinstate its original deal. It was not until December 1991 that the claimant matched the transaction (known as "squaring off"), at which time the rate had declined to 128.24, resulting in a loss to the claimant of Japanese Yen 448,500,000.

45. KFH has claimed compensation under the category of other losses, for the financial gain it would have made on the original transactions, the loss it made when it matched the outstanding transaction with Chemical Bank in December 1991, and the difference between the amount of interest it had to pay to Chemical Bank on the Japanese Yen and the interest it received on the United States dollars sold to and purchased from Chemical Bank. The claimant recognizes that it could have squared off the Chemical Bank deal in April 1991, when the rate was 138.15, and has adjusted its claim to reduce it to the loss that would have been incurred had the claimant acted at that time.

46. The Panel finds that the claimant has suffered a loss as a direct result of its inability to manage its affairs after Iraq's invasion and occupation of Kuwait and, in particular, its inability to deposit with Chase Manhattan the US$25 million that it had on deposit at Chemical Bank. As to quantification of the loss, the Panel finds that the first part of the claim, namely the financial gain that the claimant would have achieved on the transactions, should be reclassified and reviewed as a loss of profits claim.

47. For the second part of the claim, namely the loss suffered when the claimant squared off the transaction in December 1991, the Panel recommends

that compensation be awarded based on the difference between the United States dollar/Japanese Yen exchange rate applicable to the contract with Chemical Bank and the exchange rate prevailing in April 1991, when the claimant was in a position to square off the transactions.

48. However, the Panel notes that the claimant's decision to accept the unilateral liquidation of one arm of the transaction by Chase Manhattan Bank, while accepting its obligations to Chemical Bank, appears to be an independent business decision, which warrants an adjustment to the claim so as to offset the loss attributable to the claimant's actions.

49. As for the final element of the claim, namely the net interest payable by the claimant, the Panel finds that the claimant failed to submit sufficient evidence to substantiate the amount claimed.

2. Early redemption of bonds

50. One claimant, the National Bank of Kuwait, alleges that due to the need for liquidity, it sold a number of private placement bonds designated in Kuwaiti dinars, which it had taken up during the period from November 1987 to April 1989. The claimant states that the bonds were not quoted on any stock exchange, being the subject of private placements and therefore there was no mechanism by which these bonds could be traded. The claimant alleges that the bond issuers had met all their obligations as at the date of Iraq's invasion and occupation of Kuwait, that it was its intention to hold the bonds until maturity in 1992, 1993 and 1994 respectively, and had it done so, the full Kuwaiti dinar nominal value of the bonds would have been received in the denominated currency.

51. Following Iraq's invasion of Kuwait, the claimant entered into negotiations with the issuers regarding early redemption of the bonds. Redemption in Kuwaiti dinars was not possible, the currency having been withdrawn from circulation by Iraq during its invasion and occupation of Kuwait. Consequently, the redemption was in United States dollars. The amount received by the claimant was such that it suffered a penalty for early redemption. In support of the amount claimed, the claimant has provided copies of the purchase and settlement agreements. The claimant seeks compensation for the incremental and extraordinary losses arising from the redemption.

52. As discussed in paragraph 34 supra, the Panel finds that the need to realise assets by claimants such as the National Bank of Kuwait arose as a result of Iraq's invasion and occupation of Kuwait. The Panel notes that as the bonds were private placements with no quoted value, it was reasonable for the claimants to seek to liquidate these assets with the issuer. As the bonds were valued at par at the date of sale, and would normally have been redeemed for face value in Kuwaiti dinars upon maturity, the Panel finds that the claimant has provided sufficient evidence to demonstrate that the amount claimed represents the cost of liquidating those assets, and that it is an incremental cost that would not otherwise

have been incurred by the claimant. The Panel therefore recommends that compensation be awarded in the amount claimed.

53. The Panel's recommendations with respect to losses arising from movements in currency exchange rates are set out in annex II.

E. Losses arising from loans to Rafidain Bank

54. Four claimants, namely Al Ahli Bank, Al Kuwait Real Estate Bank, National Bank of Kuwait and Kuwait Finance House, have claimed for amounts due from Rafidain Bank in Iraq ("Rafidain"), in connection with syndicated loans in which the claimants participated and in connection with letters of credit issued by Rafidain.

55. The claim of Al Ahli Bank relates to three loans. The first is a US$500 million syndicated loan granted to Rafidain on 25 October 1985. The loan was repayable in seven instalments commencing on 25 October 1987 and finishing on 25 October 1990. Prior to the date on which the first instalment fell due, Rafidain requested that the payments be rescheduled, payable in 11 instalments commencing 25 April 1988 and finishing on 25 October 1993. A supplemental agreement was entered into on 1 November 1987 to give effect to the agreed rescheduling, and Rafidain paid the first four instalments that fell due in 1988 and 1989.

56. The second loan relates to a facility agreement dated 21 November 1983. The claimant alleges that, in 1982, Baghdad Sewerage Board ("BSB") issued promissory notes, guaranteed by Rafidain in favor of Wataneya International Contracting Co. ("Wataneya"). A syndicate of banks, including the claimant, entered into a Note Purchase Facility Agreement that provided for the syndicate's purchase of the notes from Wataneya (with recourse to Wataneya and the guarantor, Rafidain). The claimant states that, pursuant to this agreement, 17 notes were purchased with maturity dates falling due between 5 April 1986 and 16 September 1987. By the end of August 1987, one note had been repaid. Among the other 16 notes, 14 had become repayable but had not been paid on maturity. The total amount outstanding was US$ 24,097,573.42.

57. The claimant alleges that, on 8 September 1987, all outstanding notes were refinanced with Rafidain by Alubaf Arab International Bank acting as agent for the syndicate of banks ("the Agent"). Concurrently, an agreement was entered into by the Agent with the syndicate of banks to record the manner in which the banks would participate in the refinancing. The claimant asserts that, pursuant to the agreement, Rafidain agreed to pay the amount in seven semi-annual instalments beginning 10 September 1990 to 8 September 1993. Rafidain allegedly paid all interest until 19 March 1990 but did not pay the instalments due from 10 September 1990 onwards, nor the interest thereon after Iraq's invasion of Kuwait.

58. The third loan represents the unpaid sums owed by Rafidain to the claimant, the latter being part of a syndicate of banks that lent money to

Rafidain by a syndicated loan agreement entered into on 28 March 1983 and guaranteed by the Central Bank of Iraq. The loan was repayable in seven semi-annual instalments commencing on 28 March 1985 and finishing on 28 March 1988. The first three instalments were paid, however the instalment due in September 1986 was not paid when it fell due.

59. On 19 March 1987, Rafidain entered into a supplemental agreement with the syndicate of banks to reschedule the remaining four instalments due. The balance was rescheduled to be paid in seven semi-annual instalments commencing on 30 March 1987 and ending on 29 March 1990. The first four instalments were paid when due but, on 15 March 1990, a second supplemental agreement was entered into between Rafidain and the syndicate to reschedule the remaining three instalments due under the supplemental agreement. The remaining three instalments were rescheduled to be paid in nine instalments due on 28 February 1990, 29 June 1990 and then semi-annually until 29 December 1993. The first two instalments were paid and the claim is for the balance of seven instalments due under the second supplemental agreement.

60. The claim of Al Kuwait Real Estate Bank relates to a single syndicated loan granted to Rafidain, in which the claimant participated. The claimant states that the original loan agreement was dated 26 November 1986 and that the loan was in the process of being rescheduled when Iraq's invasion and occupation of Kuwait occurred. The last repayments by Rafidain were made on 15 November 1989 and 12 February 1990, following which unpaid instalments of principal and interest were rolled over pending the rescheduling of the loan. The claimant informed the Commission during the on-site visit to Kuwait that the loan was non-performing as at the date of Iraq's invasion and occupation of Kuwait.

61. The National Bank of Kuwait is claiming for amounts due by Rafidain in connection with letters of credit transactions where Rafidain was the issuing bank and the National Bank of Kuwait was acting as confirming bank. Finally, the claim of Kuwait Finance House relates to documents drawn on Rafidain in favour of Kuwait Finance House, in connection with a letter of credit transaction in which Rafidain was the issuing bank.

62. The first issue the Panel had to consider in determining whether claims arising from loans to Rafidain are compensable is whether they fall within the jurisdiction of the Commission. Paragraph 16 of Security Council resolution 687 (1991) provides:

"[The Security Council] Irleaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

63. With respect to the clause relating to the debts and obligations of Iraq arising prior to 2 August 1990 (the "arising prior to" clause), the Panel has considered the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims" (S/AC.26/1998/7) (the "First 'E2' Report"), wherein the "E2" Panel concluded that the "arising prior to" clause was intended to exclude from the jurisdiction of the Commission the old debt of Iraq that existed at the time of Iraq's invasion of Kuwait on 2 August 1990.

64. In determining what would constitute Iraq's old debt that existed on 2 August 1990, and in particular, what debts and obligations of Iraq fall within the meaning of the "arising prior to" clause, the "E2" Panel traced the growth of Iraq's foreign debt during the 1980s, and concluded that these same debts also distorted the entire economy of Iraq with the consequence that some old debts appeared to be new as of 2 August 1990. The "E2" Panel also noted in paragraph 87 of the First "E2" Report that:

"[i]n some instances, old and overdue debts were rescheduled. The rescheduling of such old debts perhaps renewed them under applicable law, but did not make them new debts in the sense of resolution 687 (1991)".

65. The Panel reiterates the "E2" Panel's findings and adopts its conclusions for the purposes of the review of these claims. Accordingly, the Panel finds that loans due from Iraqi parties that had been rescheduled prior to Iraq's invasion of Kuwait constitute debts or obligations of Iraq arising prior to 2 August 1990 and, as such, are excluded from the jurisdiction of the Commission.

66. In the case of Al Ahli Bank, the Panel finds that the original loan agreements giving rise to the liability of Rafidain under the three separate loans were each rescheduled on at least one occasion prior to Iraq's invasion and occupation of Kuwait. In the circumstances, the Panel finds that the claims of Al Ahli Bank in relation to these three loans are excluded from the jurisdiction of the Commission, as they represent debts or obligations of Iraq arising prior to Iraq's invasion of Kuwait within the meaning of paragraph 16 of Security Council Resolution 687.

67. In the case of Al Kuwait Real Estate Bank, the Panel found that the debt was in default several months prior to Iraq's invasion and occupation of Kuwait and that the claimant had acknowledged it was a non-performing loan. Accordingly, the Panel finds that the claim is not compensable as it is not a loss directly resulting from Iraq's invasion and occupation of Kuwait.

68. In the case of the National Bank of Kuwait, the Panel considered when the obligation of Rafidain under each letter of credit arose. In this regard, the Panel considered the First "E2" Report wherein the "E2" Panel concluded that the question of when a debt or obligation arises is determined by the claimant's performance. The second "E2" Panel (the "'E2A' Panel") is currently reviewing a number of claims that raise the

issue of performance under a letter of credit, and have concluded that it is the presentation of the stipulated documents by the beneficiary that completes the performance of the beneficiary and triggers the obligation of the issuing bank to pay the letter of credit.

69. The Panel agrees with the "E2A" Panel's conclusions. Accordingly, the Panel finds that the presentation of the stipulated documents by the National Bank of Kuwait to Rafidain under each letter of credit, which took place on various dates, all of which were prior to November 1989, triggered the obligation of Rafidain under each letter of credit. Therefore the Panel finds that the claim of the National Bank of Kuwait in relation to the letters of credit is excluded from the jurisdiction of the Commission.

70. Finally, in the case of Kuwait Finance House, the Panel finds that the underlying obligation of Rafidain arose upon the claimant's presentation of documents under the letter of credit, which occurred at the latest in 1989, and that the claim is therefore excluded from the jurisdiction of the Commission as it represents debts or obligations of Iraq that arose prior to Iraq's invasion of Kuwait, within the meaning of paragraph 16 of Security Council Resolution 687.

F. Losses arising from monies held on deposit in Iraq

71. Two claimants are seeking compensation for funds held in bank accounts in Iraq. Al Ahli Bank maintained an Iraqi dinar account with Rafidain and a United States dollar account with Al Rasheed Bank. It asserts that these balances were maintained to honour the claimant's demand drafts and transfers drawn on those banks. Evidence filed by the claimant and Iraq shows that the funds still exist in Iraq in the original accounts into which the funds were deposited. The claimant states that there is no possibility of obtaining these monies or seeking to recover them as a result of the lack of any diplomatic relations with Iraq. Al Kuwait Real Estate Bank also states that it held an Iraqi dinar account with Rafidain.

72. With respect to the compensability of claims for balances held with Iraqi banks, the Panel has considered the First "E2" Report, wherein the "E2" Panel found that a claim made by one of the claimants for the loss of use of funds held on deposit with Iraqi banks was not compensable. Since the claimant had acknowledged that the funds still existed in Iraq in the original accounts into which the funds had been deposited and had not been "expropriated, removed, stolen or destroyed", the "E2" Panel found that the claimant could not be compensated for loss of the funds.

73. The "E2" Panel considered a similar issue in its "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E2' claims" (S/AC.26/1999/22) (the "Third 'E2' Report"), where it held that claims for amounts on deposit in Iraq that would have been locally used and were still available to the claimant were not compensable.

74. The Panel reiterates the "E2" findings and adopts its conclusions for the purposes of its review of these claims. The Panel finds that the claims by Al Ahli Bank and Al Kuwait Real Estate Bank are not compensable as losses directly resulting from Iraq's invasion and occupation of Kuwait, as the funds in question remain in the accounts into which they were originally deposited, and would have been used locally in any event.

G. Losses arising from overseas operations

75. Several claimants have made claims for the costs incurred in setting up and operating overseas offices to manage their affairs during Iraq's invasion and occupation of Kuwait. For example, one claimant, IBK, is claiming for the costs incurred in setting up a temporary London office from November 1990 until May 1991. Other claimants are claiming for the costs incurred in setting up offices in locations such as New York, Bahrain, Cairo and Cyprus. The activities carried out by these offices included management of international loan portfolios and sales thereof (see paragraphs 23-26, supra), liaising with customers and staff, and planning the return of the management to Kuwait and recommencement of business. The expenses claimed include rental of premises, recruitment of staff and other general office expenses.

76. The Panel recognized the fact that Kuwaiti banks could not operate in Kuwait during the period of Iraq's occupation. The Panel also recognized that the decision by IBK and other Kuwaiti banks and financial institutions to set up overseas operations to manage their affairs, served to mitigate those claimants' losses and finds that such costs are therefore compensable as losses arising directly from Iraq's invasion and occupation of Kuwait. As to the quantification of such losses, it is the Panel's view that only those costs which are incremental in nature, i.e., those above and beyond the usual costs incurred by the claimant for such types of expense, are compensable. The Panel further finds that a reasonable time period for the operation of such overseas offices would be up to the date upon which the claimant could reasonably have expected to recommence business in Kuwait.

77. The Panel's recommendations with respect to losses arising from overseas operations are set out in annex II.

H. Losses arising from Visa card transactions

78. Three claimants, namely Burgan Bank, Gulf Bank and Commercial Bank, claim that, due to the loss of computer records in transit at the time of Iraq's invasion of Kuwait, it was unable to debit customers' accounts for the value of credit card debts incurred by them in late July and early August 1990. The claimants were, however, liable to reimburse Visa International for these amounts. The Panel considered evidence that, after liberation, the claimants tried to obtain the relevant records from Visa International, but were unable to do so as Visa International did not

retain records for a sufficient length of time. While records were retained on microfilm for the relevant period, the claimants could not retrieve those microfilm records without certain reference numbers, such reference numbers being lost in transit with the original records.

79. The Panel finds that the loss of the computer records in transit and subsequent inability to retrieve the missing information are a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that payments made by claimants to Visa International that could not be recovered from customers due to the inability to retrieve such missing information are compensable in full.

80. The Panel's recommendations with respect to losses arising from Visa card transactions are set out in annex II.

VI. THE CLAIMS

81. Having resolved the common legal and factual issues, the Panel then considered the remaining issues arising in the third instalment claims. Its determinations are set out by way of loss category, as in the case of the First and Second "E4" Reports.

A. Contract

82. Five claimants in this instalment asserted claims aggregating KD 2,325,164 (approximately US$8,045,550) for loss of contract. Three of those claims relate to losses arising from Visa card transactions and these claims have been discussed in paragraphs 78-80, supra. A fourth claimant, Kuwait Foreign Trading & Contracting and Investment Company ("KFTCIC"), is claiming for losses incurred in connection with the cancellation of a contract for the sale of real estate, allegedly due to Iraq's invasion and occupation of Kuwait.

83. KFTCIC executed a "Deferred Deed of Realty Sale" ("the Agreement") on 4 July 1989, for the sale of real estate to Mr. Abdul Al Wazzan for the sum of KD 5,300,000. The initial deposit in the amount of KD 1,300,000 was paid on 15 July 1989, and the remaining amount was payable in four annual instalments of KD 1 million every 15th July from 1990 to 1993. The claimant alleges that, due to Iraq's invasion of Kuwait, the Agreement was treated as cancelled by reason of force majeure and the deposit of KD 1,300,000 was returned to Mr. Al Wazzan on 22 June 1992. The claimant alleges that it renewed attempts to sell the property following liberation. On 10 October 1992, the claimant sold the property to a third party for a total consideration of KD 3,180,000. The claimant seeks compensation in the sum of KD 2,120,000, being the difference between the sale price pursuant to the Agreement and the sale price achieved upon the sale to the third party.

84. Kuwait Insurance Company has raised a claim for losses arising out of payments made under a life insurance policy and an aviation insurance policy The Panel has been informed that insurance payments made ir respect of life insurance and aviation insurance policies are the subject of nearly two-thirds of the claims in the second instalment of "E/F" claims. In the circumstances, the Panel has agreed that these two portions of the claim, totalling KD 68,000, should be severed from the "E4" claim of Kuwait Insurance Company and transferred as separate claims to the second instalment of "E/F" claims.

1. Compensability

85. The Panel determines whether a contract claim is compensable by evaluating the loss under the appropriate review methodology as discussed in the First "E4" Report.

2. Verification and valuation method

86. The verification and valuation method adopted by the Panel for valuing loss of contract claims is the same as that set forth in paragraphs 77-84 of the First "E4" Report.

3. Evidence submitted

87. For KFTCIC, the Panel considered evidence that a contractual relationship existed between the claimant and Mr. Al Wazzan prior to the invasion. The Panel also considered evidence that Mr. Al Wazzan sought to delay payment of the first instalment of KD 1 million, which fell due on 15 July 1990, and that the claimant consented to an extension of time to pay the instalment until 15 September 1990. However, the Panel notes that, despite requests for the same, the claimant has failed to explain the circumstances surrounding the alleged cancellation or repudiation of the Agreement and the return of the deposit to Mr. Al Wazzan. In the circumstances, the claimant has not demonstrated that the cancellation of the Agreement and the return of the deposit to Mr. Al Wazzan were a direct result of Iraq's invasion and occupation of Kuwait and accordingly the Panel finds that the claim is not compensable.

88. The Panel's recommendations with respect to contract losses are set out in annex II.

B. Real property

89. Fourteen claimants in this instalment asserted claims aggregating KD 7,870,758 (approximately US$27,234,457) for loss of real property.

1. Compensability

90. These claims relate to damage to various freehold and leasehold premises in Kuwait. The compensability standards applied by the Panel are the same as those used in the first instalment. (See the First "E4" Report, paras. 89-91.) As was the case in the first instalment of "E4" claims, most claimants established the fact and nature of damage to their buildings and facilities by providing copies of witness statements, survey reports and photographs. As in the first instalment of "E4" claims, the nature of damage alleged and the location of all the properties in Kuwait provided conclusive evidence that the damage was a result of military operations and the breakdown of civil order in Kuwait during the period of Iraq's invasion and occupation of Kuwait. Accordingly, the direct causal link between the losses alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the third instalment claims for loss of real property.

91. All claims were based on the actual costs incurred in repairing the properties or estimates of such costs.

2. Verification and valuation method

92. The verification and valuation method adopted by the Panel for valuing loss of real property claims is the same as set forth in paragraphs 92-101 of the First "E4" Report.

3. Evidence submitted

93. Most claimants submitted copies of title deeds or leases to establish their interest in the affected properties. Where leases were submitted, the secretariat performed additional checks to ensure that no duplicate claims had been filed by the owners of the leased properties. The Panel also referred to the claimants' audited accounts to corroborate the claimants' interest in the affected properties.

94. Other claimants sought to support repair costs by providing copies of payment receipts or certificates, invoices, contract documents and audited accounts. However, as in the first instalment of "E4" claims, most claimants did not include any adjustments for applicable maintenance or depreciation in their asserted losses. The Panel adjusted the claims to account for these items. Similar adjustments were made by the Panel in cases of "betterment" as defined in paragraph 97 of the First "E4" Report.

95. Where a claimant based its claim on estimated repair costs and did not give a reasonable explanation for its failure to carry out the repairs, the Panel finds a "risk of overstatement" to exist. Such claims were adjusted to offset such "risk of overstatement".

96. The Panel's recommendations with respect to real property losses are set out in annex II.

C. Tangible property

97. Seventeen claimants in this instalment asserted claims aggregating KD 28,862,820 (approximately US$99,871,349) for loss of tangible property. The claims for loss of tangible property relate mainly to loss of furniture, fixtures, equipment and vehicles. Other claims in this category relate to loss of cash and five claims relate to loss of stock.

1. Compensability

98. With regard to the compensability of claims for tangible property losses, the Panel applied the same approach taken in the First "E4" Report. (See the First "E4" Report, paras. 108-109.) Most claimants establish the fact and nature of damage to tangible property by providing copies of witness statements, statements from their audited accounts and photographs. Also, as in the case of the first instalment of "E4" claims, the claims establish, in accordance with paragraph 21 of Governing Council decision 7, that the damage was a result of military operations in Kuwait, actions by officials, agents or employees of the Government of Iraq or its controlled entities during the period of Iraq's invasion and occupation of Kuwait, in connection with the invasion or occupation and the breakdown of civil order in Kuwait during that period. Accordingly, the direct causal link between the loss alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the third instalment claims for loss of tangible property.

99. Two claimants seek compensation for loss of tangible property arising from the actions of their employees during the occupation period. National Bank of Kuwait seeks compensation for the loss of a leased vehicle that was taken to Jordan by an employee. The claimant had to repay the leasing company the value of the vehicle. Gulf Bank seeks compensation for the loss of travellers cheques that were removed from the claimant's safes by an employee and subsequently cashed in Cairo. The Panel finds that such losses are not compensable. The acts in question were carried out by the claimants' employees and the Panel finds that losses arising from such acts are not direct losses resulting from Iraq's invasion and occupation of Kuwait.

2. Verification and valuation method

100. The Panel's approach to the verification and valuation of tangible property losses depends on the nature of the asset affected. Accordingly, the approach adopted varies for stock, cash, vehicles and other tangible property losses. The verification and valuation methodology adopted by the Panel for loss of tangible property claims is the same as set forth in paragraphs 110-135 of the First "E4" Report.

3. Evidence submitted

(a) Tangible property

101. Most claimants in this instalment submitted audited accounts to establish the existence, ownership and value of the tangible assets damaged or lost as a direct result of Iraq's invasion and occupation of Kuwait. In establishing the fact and cause of loss, claimants relied on assertions in their statement of claim and witness statements. These assertions were generally corroborated by additional documents, such as photographs and independent survey reports. The Panel also relied on the claimants' post-liberation audited accounts. These accounts showed the losses of tangible property as extraordinary losses incurred as a direct result of Iraq's invasion and occupation of Kuwait, and as such provided additional independent verification of the loss.

102. Many claimants sought to value their loss using estimated repair or replacement costs. As in the case of similar real property claims, such claims were found to present a "risk of overstatement" if the claimant did not provide sufficient evidence explaining why it had not repaired or replaced the assets concerned. In some cases, the Panel was able to rely on the claimant's post-liberation accounts to determine whether the claimant had subsequently repaired or replaced the affected assets.

(b) Stock

103. For claimants alleging a loss of stock claim, the existence, ownership and value of stock lost were supported by copies of the claimants' audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report.

104. As was the case for the first instalment of "E4" claims, successful claims for loss of goods in transit related to goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. These claimants were able to establish the ownership, existence and loss of the goods by providing certificates issued by the Kuwaiti port authorities or shipping agents.

(c) Cash

105. As was the case for the first instalment of "E4" claims, successful claimants alleging cash losses were able to substantiate their claims by providing, among other things, contemporaneous records establishing cash held on 2 August 1990, such as previous month-end cash balances, copies of daily bank deposit statements, cash flow registers and monthly sales ledgers.

106. Claimants for whom no award has been recommended generally sought to rely only on witness statements without providing any additional documents substantiating their claims.

107. One claimant, Commercial Facilities Company, submitted a claim for cash lost in transit between the claimant's premises and its bank, Gulf Bank. The claimant states that it had an arrangement with Gulf Bank whereby a security company, Al Mulla Security Co ("Al Mulla"), would collect the claimant's cash takings on a daily basis and deposit them at Gulf Bank, where the money would be credited to the claimant's account. The loss claimed by Commercial Facilities Company relates to the cash takings collected by Al Mulla on 1 August 1990, which were stolen in transit to Gulf Bank.

108. The Panel considered evidence filed by the claimant, including the agreement between the claimant and Gulf Bank, which stipulated that Al Mulla, appointed by Gulf Bank, would be responsible for any losses occurring between the time the money was collected from the claimant and when it was deposited at Gulf Bank. A cross check revealed that Al Mulla has also filed a claim for compensation before the Commission in respect of the cash it collected from Commercial Facilities Company on 1 August 1990. A further cross check confirmed that Gulf Bank has not filed a claim in respect of the same cash.

109. While it appears that Commercial Facilities Company would be entitled to seek repayment of the cash from Gulf Bank or its agent, Al Mulla, elsewhere, it is the Panel's view that the appropriate claim before the Commission in respect of the loss of cash in transit is that of Al Mulla. The Panel finds that when Commercial Facilities Company handed over the cash to Al Mulla, the risk of loss of the cash passed to Al Mulla and Gulf Bank, Al Mulla being the appointed agent of Gulf Bank for collection of the cash. Accordingly, the Panel recommends that no compensation be awarded to Commercial Facilities Company in respect of their claim for loss of cash.

(d) Vehicles

110. Virtually all claimants were able to establish their ownership of lost vehicles on the date of the loss by providing copies of the deregistration certificates issued by the Government of Kuwait. The fact of loss was generally established by the deregistration certificates, together with additional substantiating documents such as witness statements describing the circumstances of the loss and post-liberation audited accounts recording the loss of vehicles as an extraordinary item.

111. Where claimants did not provide deregistration certificates or where the name of the owner in the deregistration certificate could not be linked to the claimant or its owners, directors or employees, the Panel recommends that no compensation be awarded.

112. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the M.V.V. Table (as defined in paragraph 135 of the First "E4" Report) or, for vehicles not listed in the M.V.V. Table, against other third party estimates. In the case of third party estimates, the Panel tested these estimates by applying alternative valuation methods such as the net book value and depreciated replacement cost methods.

113. The Panel's recommendations with respect to tangible property losses are set out in annex II.

D. Income-producing property

114. One claimant, KFTCIC, has submitted a loss of contract claim that was reclassified and reviewed as a claim for loss of income-producing property.

115. KFTCIC seeks compensation for the loss it allegedly suffered as a result of a decrease in the market value of its real property portfolio. The claimant alleges that, as a result of the invasion and occupation, its real property portfolio declined in value resulting in a loss recorded on the claimant's balance sheet. The Panel found that the claimant had not sufficiently established that the decrease in value of the claimant's real property portfolio was a direct result of Iraq's invasion and occupation of Kuwait. Other factors may have caused such a decline, in particular the economic conditions prevailing in Kuwait in the years following liberation. Accordingly, the Panel finds that the loss claimed is not compensable.

116. The Panel's recommendations with respect to income-producing property losses are set out in annex II.

E. Payment or relief to others

117. Fourteen claimants in this instalment submitted claims aggregating KD 3,176,757 (approximately US$10,992,239) for payment or relief to others. Several claimants seek reimbursement for redundancy payments or "termination indemnities" that they paid to their non-Kuwaiti employees in respect of the termination of those employees' employment contracts. Two claimants, Al Ahli Bank and IBK seek reimbursement for incentives paid to employees to encourage them to return to Kuwait upon liberation, and in the case of Al Ahli Bank, for bonus payments made to employees who assisted the claimant in protecting its assets during the occupation period, and to cashiers who worked overtime in order to facilitate the exchange of old Kuwaiti dinars for the new issue of currency.

1. Compensability

118. The Panel followed the same approach taken in the First "E4" Report, (see paragraphs 153-154), with the addition of the items noted below. For amounts claimed by way of compensation for incentives paid to employees to encourage them to return to Kuwait, and for bonus payments for cashiers working overtime, the Panel finds that such payments were the result of independent business decisions by the claimants concerned and that such discretionary bonus payments are not compensable as losses directly resulting from Iraq's invasion and occupation of Kuwait. As regards bonus payments made to employees who assisted the claimant during the occupation period, the Panel finds that such payments are compensable as they effectively mitigated the losses that the claimant would otherwise have suffered during the occupation period. However, the Panel finds that such payments are compensable subject to the following conditions:

(a) the worker must have been employed in these particular roles;

(b) the time period and the payment must appear reasonable; and

(c) such payments must be supported by sufficient evidence.

119. In respect of termination indemnities, i.e., amounts paid pursuant to an employment contract terminated during Iraq's invasion and occupation of Kuwait, the Panel followed the same approach taken in the Second "E4" Report (see paragraphs 72 to 74 thereof).

2. Verification and valuation method

120. The verification and valuation methodology adopted by the Panel for claims relating to payment or relief to others is the same as set forth in paragraphs 155-157 of the First "E4" Report. In addition, for claims relating to termination indemnities, the Panel verifies that the individuals receiving payments were employees of the claimant at the time of Iraq's invasion and occupation of Kuwait, by reference to employment contracts, payroll records or other appropriate documentary evidence.

3. Evidence submitted

121. The claims for payment of termination indemnities were adjusted to reflect the amount of the payment that represented an incremental cost to the claimant as a result of Iraq's invasion and occupation of Kuwait.

122. The Panel's recommendations with respect to payment or relief to others claims are set out in annex II.

F. Loss of profits

123. Nineteen claimants in this instalment submitted claims aggregating KD 206,369,128 (approximately US$714,080,028) for loss of profits. Two claimants, the Kuwait Foundation for the Advancement of Science ("KFAS") and Zakat House, which are charitable organizations, have made claims under the category of other losses for non-receipt of voluntary contributions. These claims were reclassified by the Panel and reviewed as loss of profit claims.

1. Compensability

124. The four significant legal and factual issues raised by the first instalment claims are all raised by the third instalment claims. These issues all relate to the impact and assessment of (a) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (b) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (c) the indemnity period for loss of profits claims, and (d) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in the third instalment, with the following additional considerations for those claims.

(a) The post-liberation Kuwaiti Difficult Debt Settlement Programme

125. As explained in the First "E4" Report, the CBK purchased from Kuwaiti banks and financial institutions the debt owed to these banks and institutions by Kuwaiti individuals and corporations. Many of these Kuwaiti banks and financial institutions are claimants in this instalment of "E4" claims. The debt was purchased from the selling banks and financial institutions against floating-rate Government bonds issued for that purpose. The debt purchased by the CBK included, in some instances, debts against which provisions for bad and doubtful debts had been made.

126. As a result of the purchase of these debts, there was an impact upon the profit and loss accounts of many third instalment claimants for the financial year ending in 1991, and on some occasions for the financial years 1992 and 1993, including, inter alia, the impact of the release of such provisions for bad and doubtful debts. The Panel reiterates its findings as stated in paragraph 172 of the First "E4" Report, that benefits received by claimants under the Difficult Debt Settlement Programme cannot be regarded as "compensating" any loss or damage suffered as a direct result of Iraq's invasion and occupation of Kuwait. Hence, in assessing the loss of profits suffered by third instalment claimants, any impact upon the profit and loss accounts of such claimants due to the Difficult Debt Settlement Programme has been removed when calculating the appropriate award for loss of profits.

(b) Non-receipt of voluntary contributions

127. As mentioned in paragraph 123 above, two claimants, KFAS and Zakat House, seek compensation for non-receipt of voluntary contributions. KFAS is a non-profit-making organization the activities of which include the funding of scientific research, the granting of scholarships and the publishing of scientific and technical books. Zakat House is also a non-profit-making organization which collects and distributes charity in Kuwait. Both claim that they rely on voluntary contributions from Kuwaiti companies and individuals for their operating revenues and to fund their charitable work. These claims were made under the category of other losses but have been reclassified and reviewed as loss of profit claims, for the reasons set out below.

128. With regard to the amounts claimed for loss of contributions, the Panel had to determine whether firstly, an organization that declares itself to operate on a non-profit basis could be compensated for loss of contributions in a manner similar to that for loss of profits and secondly, if so, whether the failure to receive voluntary contributions was a direct result of Iraq's invasion and occupation of Kuwait. In reaching its determination on these issues, the Panel considered the historical levels of contributions received by these claimants. The Panel found that these claimants received a consistent level of contributions in the three financial years preceding Iraq's invasion and occupation of Kuwait.

129. The Panel finds no basis upon which to conclude that these non-profit organizations, which rely on contributions for their operating revenues, should not be compensated in principle for the loss of such contributions, in the same manner that a for-profit organization is entitled to be compensated for loss of profits. The Panel also finds that the loss of contributions in the case of KFAS and Zakat House was a direct result of Iraq's invasion and occupation of Kuwait and that they should be compensated for such losses in a manner identical to that for loss of profits.

130. As regards quantification of the loss suffered by KFAS, the Panel finds that the claimant received substantial interest income during the period of Iraq's invasion and occupation of Kuwait. There is evidence that this income was due to cash balances that the claimant had on deposit throughout the two year period January 1990 to December 1991. The level of interest income is such that the claimant received income over the invasion period at a level higher than the historical average. In the circumstances, the Panel finds that the claimant has not suffered an actual loss over the occupation period and accordingly it recommends that no compensation be awarded.

131. In the case of Zakat House, the Panel recommends compensation based on the claimant's historical levels of income available for charitable distribution.

132. Another claimant, Kuwait Finance House, received a grant from the Government of Kuwait in 1991 in the sum of KD 42,444,000. The claimant recorded the receipt of this grant as exceptional income through its profit and loss account for the financial year ending December 1991. Evidence from the on-site visit to Kuwait shows that the grant was not part of the Difficult Debt Settlement Programme. The Panel finds that this claimant has been effectively compensated by the Government of Kuwait for the loss of profit suffered as a result of Iraq's invasion and occupation of Kuwait, and recommends that no compensation be awarded.

2. Verification and valuation method

133. The verification and valuation methodology adopted by the Panel for loss of profits claims is as set forth in paragraphs 194-202 of the First "E4" Report.

3. Evidence submitted

134. Claims based on separate lines of business were verified and valued applying the principles set out in the First "E4" Report in paragraphs 188-193. One claimant, Jazzim Al-Wassan, had five separate lines of business and each separate division was verified and valued according to the above principles.

135. The Panel's recommendations with respect to loss of profits claims are set out in annex II.

G. Receivables

136. Ten claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KD 29,879,509 (approximately US$103,389,304). The majority of these claims were for outstanding consumer loans owed by non-Kuwaiti individuals to Kuwaiti banks prior to Iraq's invasion. Claims have also been made for amounts owed by and balances held by Rafidain. However, the Panel's determination on these claims is set out in paragraphs 54-70 supra. One claimant, Al Ahli Bank, is claiming for unpaid loans in respect of two borrowers accredited as martyrs. Al Ahli Bank is also claiming for losses incurred in connection with a letter of credit transaction in which it was acting as confirming bank. The claimant credited the beneficiary of the letter of credit, but was unable to recover payment from the issuing bank.

1. Compensability

137. Most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue raised is whether the uncollected debt had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

138. The Panel reiterates its determination on this issue as set out in paragraph 209 of the First "E4" Report, namely that claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait should demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

139. Al Ahli Bank seeks compensation for losses incurred in connection with a documentary credit transaction, in which it was acting as confirming bank. The letter of credit ("L/C"), was issued by Middle East Bank in Karachi, in favour of a Kuwaiti party, Al Raay International Group ("Al Raay"). The L/C documents were received by the claimant for negotiation on 30 July 1990 and the claimant negotiated the L/C on 1 August 1990, allegedly in accordance with the L/C terms. The claimant sent a telex to Middle East Bank on 1 August 1990 confirming that negotiation of the L/C had taken place and that it was forwarding the documents to Middle East Bank by courier that day.

140. Al Ahli Bank claims that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to dispatch the documents by courier as stated in its telex, and it was not until after liberation that it was able to present the documents to Middle East Bank for reimbursement. The claimant alleges that Middle East Bank refused to reimburse the claimant on the grounds of undue delay in presentation of the documents. The claimant states that it was, however, obliged to reimburse Al Raay for the amount of the L/C and that it has therefore suffered a loss in the amount of the L/C, directly resulting from Iraq's invasion and occupation of Kuwait.

141. The Panel considered evidence filed by the claimant and, in particular, a telex from Middle East Bank to the claimant dated 29 September 1991, stating that the basis of its refusal to pay the claimant was that the negotiation of the documents by the claimant was not in accordance with the L/C terms, as the documents should have been negotiated by 28 July 1990. Middle East Bank also alleged that there were discrepancies on the face of the shipping documents. Hence, the Panel finds that the refusal of Middle East Bank to reimburse the claimant does not relate to matters connected with Iraq's invasion and occupation of Kuwait, but is rather the result of a dispute between the parties as to the conformity of the documents and the validity of the negotiation by the claimant. The Panel finds that in these circumstances, the claim of Al Ahli Bank is not compensable.

2. Verification and valuation method

142. The third instalment claims for uncollectible receivables were verified and valued in the same manner as the first instalment claims. (See the First "E4" Report, paras. 211-215). Three claims satisfied the criteria established in the First "E4" Report. The remaining claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion of Kuwait. This shortcoming was brought to the attention of the claimants. While a number of responses were received from claimants, none satisfied the above criteria.

3. Evidence submitted

143. As discussed above, the Panel disallows claims that rely on mere assertions that uncollected debts are ipso facto uncollectible because the debtors did not return to Kuwait.

144. In the case of Al Ahli Bank's claim for non-payment of loans by borrowers killed during the invasion and occupation, the Panel found that the claimant had provided sufficient evidence to demonstrate that the non-payment of the loans in question was a direct result of Iraq's invasion and occupation of Kuwait and recommends that compensation be awarded in full.

145. The Panel's recommendations with respect to uncollectible receivables are set out in annex II.

H. Restart costs

146. Twelve claimants in this instalment asserted claims aggregating KD 5,069,383 (approximately US$17,541,118) for restart costs. As in the Second "E4" Report, the amounts claimed as restart costs have been reviewed using the existing methodology. Thus, the Panel verifies whether the claim is supported by proof of payment for the items claimed. In this regard, the Panel looks for similar evidence of payment to that required in the case of claims for payment or relief to others. The Panel disallows amounts claimed that are not supported by sufficient documentary evidence to prove that payments were actually made by the claimant. The Panel then verifies whether the cost is an incremental cost to the claimant, i.e., in excess of costs normally incurred by the claimant for this type of expense. Finally, the Panel considers whether the claimant has taken appropriate steps to mitigate its loss.

147. The Panel encountered claims in this category for the costs of returning employees to Kuwait, including airfares and hotel accommodation expenses for the recruitment of new employees and the costs of cleaning-up the claimants' premises. The Panel found that many of the claims for restart costs consisted of the cost of repairing or replacing tangible assets in order to resume business. Those claims were accordingly reclassified by the Panel and reviewed as loss of tangible property claims.

148. The Panel's recommendations with respect to restart costs are set out in annex II.

I. Other losses

149. One claimant, Commercial Bank of Kuwait, seeks compensation for the costs of borrowing funds to meet its immediate commitments upon liberation, including withdrawals by customers and extraordinary operating costs to restart business. The claimant states that, due to a liquidity crisis, it was necessary to obtain a loan from Credit Lyonnais in March 1991. In order to take out this facility, it was necessary to incur a credit facility and an arrangement fee of KD 80,000 and additional interest totalling US$1,400,000 (KD 397,978). The claimant seeks compensation for these costs, which it alleges are a direct result of Iraq's invasion and occupation of Kuwait.

150. The Panel notes that the claimant provided evidence to show that the additional interest incurred, representing 0.25 per cent above the London Interbank Offered Rate ("LIBOR"), was an incremental cost incurred as a direct result of Iraq's invasion of Kuwait. In particular, the claimant provided evidence to show that prior to Iraq's invasion of Kuwait, it was able to borrow at or close to LIBOR. The Panel accepts the claimant's evidence that the additional 0.25 per cent above LIBOR was to offset the extra risk in lending to a Kuwaiti bank immediately following Iraq's invasion and occupation of Kuwait. The Panel finds that the claimant has incurred incremental costs that are a direct result of Iraq's invasion and occupation of Kuwait and recommends compensation in the amount claimed.

151. Another claimant, the National Bank of Kuwait, seeks compensation for amounts paid by way of a sale and repurchase fee. The claim relates to a GBP 15 million loan, of which GBP 10 million was sub-participated to the Republic Bank of New York on 2 October 1990. The loan itself was repayable on 12 August 1991. If the loan was not repaid by the borrower on that date, the claimant was liable to reacquire the loan at a cost of GBP 10,950,000. The borrower did not settle the loan and the claimant became liable to repurchase the loan from Republic Bank of New York. The claim is for the amount of the repurchase fee, i.e., GBP 950,000. The Panel finds that while the sub-participation of the loan itself may have been due to Iraq's invasion of Kuwait, there is no evidence to show that non-payment of the loan by the borrower, which had the effect of triggering the claimant's liability to repurchase the loan and so incur the fee in the amount claimed, was a direct result of Iraq's invasion and occupation of Kuwait. In the circumstances, the Panel recommends that no compensation be awarded.

152. The National Bank of Kuwait also seeks compensation for penalties incurred when it arranged to terminate its participation in the provision of syndicated loan facilities. The claimant alleges that, due to the interruption of its business, it was unable to fund its commitments to the syndicate. The Panel finds that the cost incurred in the termination of

the facility is an incremental cost to the claimant directly resulting from Iraq's invasion and occupation of Kuwait. The Panel recommends that compensation be awarded for the amount claimed.

153. Finally, the National Bank of Kuwait seeks compensation for redundancy payments made to nine members of staff in its French branch office, whose employment contracts were terminated due to a significant loss in the claimant's business as a result of Iraq's invasion and occupation of Kuwait. In resolving this claim, the Panel considered the "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1998/1), wherein the "D" Panel considered whether claimants working in third countries (e.g., employees of overseas branch offices of Kuwaiti or Iraqi companies) could be considered to have suffered a direct employment-related loss as a result of Iraq's invasion and occupation of Kuwait. The "D" Panel found that if an employment-related loss is shown to be "direct", it is compensable, regardless of the location of the loss.

154. The Panel also considered the "Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of 'C' claims" (S/AC.26/1999/11), wherein the "C" Panel considered the situation of 27 claimants seeking compensation for salary losses, all former employees of a London-based branch of an Iraqi state-owned bank, who were made redundant as a result of the cessation of the bank's operations following Iraq's invasion of Kuwait. The "C" Panel took into account that the claimants had made specific showings, substantiated by appropriate evidence, that (a) their claims arose out of an economic activity having a direct relationship with Iraq, and (b) their employment was directly affected by Iraq's invasion and occupation of Kuwait. The "C" Panel found the claims to be generally compensable, although it found that those claims for losses after 1991 were too remote and did not meet direct causal requirements as the "C" Panel generally interpreted them.

155. The Panel adopts the "D" Panel's finding that, if an employment-related loss is shown to be "direct", it is compensable, regardless of the location of the loss, and finds that the claim of National Bank of Kuwait for compensation for redundancy payments is compensable as a direct loss arising out of Iraq's invasion and occupation of Kuwait. The Panel finds the claimant has demonstrated that its French branch office was directly affected by Iraq's invasion and occupation of Kuwait and that the redundancy payments represent an incremental expense, i.e., the payments are above and beyond the costs that the claimant would normally incur for this type of expense.

156. The Commercial Bank of Kuwait seeks compensation for costs incurred in connection with the closure of two of its branch offices in the United States of America. The claimant provided evidence to demonstrate that the economic activities of the branch offices were disrupted as a direct result of Iraq's invasion and occupation of Kuwait, and that the claimant could no

longer sustain the operational costs of these offices. The Panel finds that such losses are compensable in principle, but recommends that the claim be adjusted for any "risk of overstatement" that arises as a result of the fact that the long-term commercial viability of the offices had not been fully established, the offices having been opened in September and October 1989, respectively.

157. Al Ahli Bank seeks compensation for amounts paid by way of compensation for termination of a contract of employment and associated legal costs, when one of its non-Kuwaiti employees took legal proceedings against the claimant for termination of his contract of employment. The claimant settled the legal proceedings out of court, prior to judgment being obtained against it.

158. The Panel finds that, while the termination of the employment contract by the claimant was undoubtedly a direct result of Iraq's invasion and occupation of Kuwait, the bulk of the payment made by the claimant represents a regular (and unexceptional) salary expense that would have been incurred in the normal course of events. The Panel reiterates its views expressed in paragraph 153 of the First "E4" Report that, where a claimant seeking compensation for a salary expense has also raised a claim for loss of profits, the Panel finds that compensation for regular salary expenses relating to the period for which a loss of profits claim has been raised duplicates compensation. As regards the legal costs incurred, the Panel finds that they did not arise as a direct result of Iraq's invasion and occupation of Kuwait, but rather as a result of the claimant's own conduct in failing to pay the ex-employee his contractual entitlement on termination of his contract.

159. Kuwait Finance House has submitted a claim for loss of development costs incurred in connection with a point of sale project which was interrupted as a result of Iraq's invasion and occupation of Kuwait. The evidence filed by the claimant shows that the United States supplier of the computer hardware for the project went into liquidation during the period when the project was interrupted and the project could only be completed upon liberation through the use of other suppliers at extra expense.

160. The Panel finds that there is no evidence to show that the liquidation of the original hardware manufacturer was a direct result of Iraq's invasion and occupation of Kuwait and hence recommends that no compensation be awarded for the claim of Kuwait Finance House.

161. Several claimants, including Gulf Bank and Commercial Bank, seek compensation for rents paid in advance for their branch premises for the months during Iraq's invasion and occupation of Kuwait. The Panel reiterates the findings it made on this issue as set out in paragraph 108 of the Second "E4" Report, namely that such payments are "sunk" costs that were incurred prior to Iraq's invasion and occupation of Kuwait and that any damages suffered by claimants in this regard (e.g., profits lost due to the claimant's inability to use its premises) should be reflected in a

claim for loss of profits. The Panel applied this same approach in its analysis of other claims for pre-paid expenses such as pre-paid insurance. Accordingly, the Panel recommends no compensation for such claims.

162. The Panel's recommendations with respect to other losses is set out in annex II.

VII OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

163. In relation to the applicable dates for currency exchange rate and interest, the Panel adopts the same approach used in the First "E4" Report. (See the First "E4" Report paras. 226-233.)

B. Claim preparation costs

164. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs.

VIII CORRECTION OF FIRST AND SECOND INSTALMENT CLAIMS

165. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts for the first and second instalment of "E4" claims as set out in annex III to this report.

IX RECOMMENDED AWARDS

166. Based on the foregoing, the awards recommended by the Panel for claimants in the third instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest Kuwaiti dinar and therefore the amounts claimed may vary from the amount stated on Form E by 1 KD.

Geneva, 20 December 1999

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

Annex I [ENGLISH ONLY]

Recommended awards for third instalment of "E4" claims
Reported by UNSEQ and UNCC claim numbers and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00049	4003171	Kuwait Foundation for the Advancement of Sciences	8,143,174	7,516,758	172,272	596,097
E-00050	4003172	Kuwait Investment Company	18,746,412	17,537,572	2,259,796	7,819,363
E-00085	4003085	Kuwait Foreign Trading Contracting & Investment Co. S.A.K.	48,284,377	39,047,939	962,064	3,319,225
E-00109	4003155	The Industrial Bank of Kuwait K.S.C.	31,208,336	30,104,308	2,839,997	9,799,568
E-00110	4003156	Al Ahli Bank of Kuwait (K.S.C.)	63,426,089	63,399,214	3,840,521	13,289,000
E-00112	4003218	Burgan Bank S.A.K.	3,702,663	3,292,351	1,917,609	6,621,595
E-00113	4003219	The Gulf Bank K.S.C.	37,069,120	37,044,795	5,536,624	19,157,869
E-00116	4003221	Zakat House	8,233,695	8,232,545	4,366,496	15,108,983
E-00134	4003286	Commercial Bank of Kuwait, S.A.K.	32,388,612	32,388,612	11,890,912	41,085,442
E-00138	4003290	National Bank of Kuwait S.A.K.	175,202,000	175,202,000	22,389,421	77,472,045

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less amounts claimed for claim preparation costs and interest. As set forth in paragraphs 164 and 163 of the report, the Panel has made no recommendation with regard to these items.

Annex I

Recommended awards for third instalment of "E4" claims

Reported by UNSEQ and UNCC claim numbers and claimant names

E-00147	4003299	Kuwait Real Estate Bank K.S.C.	9,729,596	9,729,596	2,157,535	7,465,519
E-00658	4003781	Kuwait Industrial Projects Co.	4,534,512	4,529,806	600,000	2,076,125
E-00786	4003901	The Public Authority of Minors Affairs	5,819,295	5,819,295	1,954,331	6,757,083
E-01152	4004260	Commercial Facilities Company	8,510,802	8,510,802	1,908,820	6,586,592
E-01167	4004275	Kuwait Finance House K.S.C.	48,826,962	48,802,127	6,644,134	22,990,083
E-01435	4004598	The Bank of Kuwait and the Middle East K.S.C.	13,803,583	12,198,321	4,096,108	14,157,801
E-01538	4004621	Jassim Al Wazzan Sons General Trading Company, W.L.L.	7,101,939	7,095,754	3,635,888	12,580,927
E-01594	4004702	Kuwait Insurance Company S.A.K.	3,023,112	3,018,507	2,434,065	8,422,370
E-01743	4004851	Coast Investment & Development Co. K.S.C.(Closed)	4,989,609	4,989,609	1,953,508	6,738,171
E-01826	4004899	Kuwait Investment Projects Company K.S.C.	5,091,073	4,488,226	630,032	2,176,015
		TOTALS	537,834,961	522,948,137	82,190,133	284,219,873

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less amounts claimed for claim preparation costs and interest. As set forth in paragraphs 164 and 163 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

[ENGLISH ONLY]

Claimant's name: Kuwait Foundation for the Advancement of Sciences
UNCC claim number: 4003171
UNSEQ number: E-00049

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	149,978	100,215	Claim adjusted for depreciation. See paragraphs 97 to 113 of the report.
Payment or relief to others	74,323	72,057	Claim reclassified to payment or relief to others and loss of profits. Claim adjusted for evidentiary shortcomings. See paragraphs 117 to 112 of the report.
Loss of profits	7,292,457	0	Claim adjusted to reflect historical results. See paragraphs 123 to 135 of the report.
TOTAL	7,516,758	172,272	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	621,416	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Investment Company
UNCC claim number: 4003172
UNSEQ number: E-00050

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	2,885,072	2,147,715	Claim adjusted for maintenance and to reflect revised estimates. See paragraphs 89 to 96 of the report.
Loss of tangible property	13,295	8,722	Claim adjusted to reflect actual cost incurred, for maintenance and for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Payment or relief to others	180,095	0	Claim reclassified to payment or relief to others and loss of profits. Insufficient evidence to substantiate claim. See paragraphs 117 to 122 of the report.
Loss of profits	14,305,360	0	Claim adjusted to reflect historical results. See paragraphs 123 to 135 of the report.
Restart costs	153,750	103,359	Original other loss not categorised claim reclassified to restart costs and interest. Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.
TOTAL	17,537,572	2,259,796	

Claim preparation costs	23,200	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	1,185,640	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Kuwait Foreign Trading Contracting & Investment Co. S.A.K.
UNCC claim number: 4003085
UNSEQ number: E-00085

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	2,120,000	0	Insufficient evidence to substantiate claim. See paragraphs 82 to 88 of the report.
Loss of real property	85,761	73,974	Claim reclassified to loss of real property and income producing property. Claim adjusted for maintenance. See paragraphs 89 to 96 of the report.
Loss of income-producing property	31,453,178	0	See paragraphs 114 to 116 of the report.
Loss of profits	5,389,000	888,090	Claim adjusted to reflect historical results, to restrict the period of loss to 12 months and for evidentiary shortcomings. See paragraphs 123 to 135 of the report.
TOTAL	39,047,939	962,064	

Claim preparation costs	19,500	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	9,216,938	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Industrial Bank of Kuwait K.S.C.
UNCC claim number: 4003155
UNSEQ number: E-00109

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	42,534	33,250	Claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 89 to 96 of the report.
Loss of tangible property	89,747	70,775	Claim reclassified to loss of tangible property, cash and vehicles. Claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of cash	40,463	40,463	Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of vehicles	5,300	4,724	Claim adjusted to reflect M.V.V. Table values and for depreciation. See paragraphs 97 to 113 of the report.
Payment or relief to others	74,146	14,999	Claim for relocation expenses awarded in full. See paragraphs 117 to 122 of the report. Claim for salary incentives adjusted. See paragraph 118 of the report.
Loss of profits	6,562,746	2,505,473	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 123 to 135 of the report.

Other loss not categorised	23,289,372	170,313	Claim reclassified to other loss not categorised, loss of profits and interest. For overseas operations see paragraphs 75 to 77 of the report. For foreign exchange losses see paragraphs 32 to 53 of the report. For sale of assets see paragraphs 23 to 26 of the report.
TOTAL	30,104,308	2,839,997	

Interest	1,104,028	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahli Bank of Kuwait (K.S.C.)
UNCC claim number: 4003156
UNSEQ number: E-00110

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	164,029	100,163	Claim reclassified to loss of real property and profits. Claim adjusted for maintenance, failure to repair/replace and for evidentiary shortcomings. See paragraphs 89 to 96 of the report.
Loss of tangible property	113,740	100,744	Claim reclassified to loss of tangible property, stock, cash, vehicles, bad debts and other loss not categorised. Claim adjusted for depreciation and maintenance. See paragraphs 97 to 113 of the report.
Loss of stock	9,229	9,229	Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of cash	342,022	334,782	Claim adjusted to reflect amount supported by the evidence. See paragraphs 97 to 113 of the report.
Loss of vehicles	4,000	4,000	Claim awarded in full. See paragraphs 97 to 113 of the report.
Payment or relief to others	152,759	6,000	Claim adjusted. See paragraphs 117 to 122 of the report.
Loss of profits	4,178,832	2,104,219	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 123 to 135 of the report.
Bad debts	11,212,567	1,032,947	Original contracts claim reclassified to bad debts and other loss not categorised. For balances held in Iraq see paragraphs 71 to 74 of the report. For loans to Rafidain Bank, see paragraphs 54 to 70 of the report. Claim for loans to stateless martyrs awarded in full. Claim for loans to expatriates adjusted for evidentiary shortcomings. See paragraphs 136 to 145 of the report. For claim for letter of credit transaction, see paragraphs 139 to 141 of the report.

Restart costs	196,667	136,878	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.
Other loss not categorised	47,025,369	11,559	Claim reclassified to payment or relief to others, profits, restart costs and other loss not categorised. For claim for sale of assets see paragraphs 23 to 26 of the report. For claim for foreign exchange loss see paragraphs 32 to 53 of the report. For claim for overseas operations see paragraphs 75 to 77 of the report. For claim for ex-patriate severance costs see paragraph 157 to 158 of the report. For claim for cancelled bank notes see paragraphs 27 to 31 of the report.
TOTAL	63,399,214	3,840,521	

Claim preparation costs	26,875	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Burgan Bank S.A.K.
UNCC claim number: 4003218
UNSEQ number: E-00112

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	2,456	2,456	Claim reclassified to loss of contracts and bad debt. Claim awarded in full. See paragraphs 78 to 80 of the report.
Loss of real property	168,517	76,002	Claim adjusted for evidentiary shortcomings, maintenance and failure to repair/replace. See paragraphs 89 to 96 of the report.
Loss of tangible property	214,690	75,729	Claim reclassified to loss of tangible property, stock, cash, vehicles, restart costs and other loss not categorised. Claim adjusted for evidentiary shortcomings, failure to repair/replace and depreciation. See paragraphs 97 to 113 of the report.
Loss of stock	196,917	115,196	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of cash	86,724	2,601	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of vehicles	13,546	11,079	Claim adjusted to reflect M.V.V. Table values. See paragraphs 97 to 113 of the report.
Payment or relief to others	53,502	19,200	Claim reclassified to payment or relief to others, loss of profits and restart costs. Insufficient evidence to substantiate POW compensation claim. Airfare and accomodation claims awarded in full. See paragraphs 117 to 122 of the report.
Loss of profits	1,580,812	1,580,812	Claim awarded in full. See paragraphs 123 to 135 of the report.
Bad debts	279,273	0	Insufficient evidence to substantiate claim. See paragraphs 136 to 145 of the report.

Other loss not categorised	695,914	34,534	For cancelled banknotes see paragraphs 27 to 31 of the report. For foreign office costs see paragraphs 75 to 77 of the report. Insufficient evidence to substantiate claims for consignment lost.
TOTAL	3,292,351	1,917,609	

Claim preparation costs	16,000	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	394,312	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Gulf Bank K.S.C.
UNCC claim number: 4003219
UNSEQ number: E-00113

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	69,550	69,550	Claim awarded in full. See paragraphs 78 to 80 of the report.
Loss of real property	264,979	100,623	Claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 89 to 96 of the report.
Loss of tangible property	432,339	184,456	Claim adjusted for depreciation. See paragraphs 97 to 113 of the report.
Loss of cash	1,620,933	1,496,341	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Payment or relief to others	278,302	0	Claim reclassified to payment or relief to others and loss of profits. For salary incentives see paragraphs 117 to 122 of the report.
Loss of profits	8,036,038	2,427,469	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 123 to 135 of the report.
Bad debts	1,365,203	0	Original loss of contracts claim reclassifed to bad debts. Insufficient evidence to substantiate claim. See paragraphs 136 to 145 of the report.
Restart costs	538,744	442,892	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.
Other loss not categorised	24,438,707	815,293	Claim reclassified to loss of contracts, cash, profits, claim preparation, restart costs and other loss not categorised. For sale of assets see paragraphs 23 to 26 of the report. For overseas operations see paragraphs 75 to 77 of the report. For pre-paid expenses see paragraph 161 of the report. For stolen travellers cheques see paragraph 97 to 113 of the report. For cancelled banknotes see paragraphs 27 to 31 of the

			report.
TOTAL	37,044,795	5,536,624	

Claim preparation costs	24,325	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Zakat House
UNCC claim number: 4003221
UNSEQ number: E-00116

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	148,878	119,102	Claim adjusted for maintenance. See paragraphs 89 to 96 of the report.
Loss of tangible property	28,772	21,076	Claim reclassified to loss of tangible property, vehicles and other loss not categorised. Claim adjusted for depreciation and failure to repair/replace. See paragraphs 97 to 113 of the report.
Loss of vehicles	10,090	8,916	Claim adjusted to reflect M.V.V. Table values. See paragraphs 97 to 113 of the report.
Payment or relief to others	1,700	0	Insufficient evidence to substantiate claim. See paragraphs 117 to 122 of the report.
Loss of profits	8,043,105	4,217,402	Claim adjusted to reflect level of historical donations and income. See paragraphs 123 to 135 of the report.
TOTAL	8,232,545	4,366,496	

Claim preparation costs	1,150	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Commercial Bank of Kuwait, S.A.K.
UNCC claim number: 4003286
UNSEQ number: E-00134

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	65,158	65,158	Claim reclassified to loss of contracts, profits, bad debts and other loss not categorised. Claim awarded in full. See paragraphs 78 to 80 of the report.
Loss of real property	428,312	153,727	Claim reclassified to loss of real property and other loss not categorised. Claim adjusted for evidentiary shortcomings, maintenance and depreciation. See paragraphs 89 to 96 of the report.
Loss of tangible property	94,440	94,440	Claim reclassified to loss of real property, tangible property, cash and other loss not categorised. Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of cash	2,610,669	2,605,732	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Payment or relief to others	322,797	117,149	Claim reclassified to payment or relief to others, loss of profits and restart costs. Claim adjusted for evidentiary shortcomings. For salary incentives, see paragraphs 117 to 122 of the report.
Loss of profits	10,957,359	5,446,000	Claim adjusted to reflect historical results. See paragraphs 123 to 135 of the report.
Bad debts	7,447,496	2,726,503	Consumer loans claim adjusted for evidentiary shortcomings. Insufficient evidence to substantiate commercial debt claim. See paragraphs 136 to 145 of the report.
Restart costs	39,030	14,225	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.

Other loss not categorised	10,423,351	667,978	Claim adjusted. For sale of assets see paragraphs 23 to 26 of the report. For pre-paid rent see paragraph 161 of the report. For loss resulting from borrowing funds see paragraphs 149 to 150 of the report. For cancelled banknotes see paragraphs 27 to 31 of the report. For closure costs of overseas operations see paragraph 156 of the report.
TOTAL	32,388,612	11,890,912	

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: National Bank of Kuwait S.A.K.
UNCC claim number: 4003290
UNSEQ number: E-00138

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	9,000	9,000	Claim reclassified to loss of tangible property, cash and other loss not categorised. Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of cash	5,257,421	5,257,421	Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of vehicles	4,000	0	See paragraphs 97 to 113 of the report.
Payment or relief to others	132,000	132,000	Claim awarded in full. See paragraphs 117 to 122 of the report.
Loss of profits	81,410,000	7,428,000	Claim adjusted to reflect historical results and interest received. See paragraphs 123 to 135 of the report.
Bad debts	2,618,000	0	For loans to Rafidain Bank see paragraphs 54 to 70 of the report.
Restart costs	2,031,000	283,000	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.

Other loss not categorised	83,740,579	9,280,000	Original loss of contracts claim reclassified to other loss not categorised. Other loss not categorised claim reclassified to loss of cash, vehicles, profits, bad debts, restart costs and other loss not categorised. For foreign exchange losses see paragraphs 32 to 53 of the claim. For sale of assets see paragraphs 23 to 26 of the report. For sale and repurchase fee see paragraph 151 of the report. For penalty on repayment of loans and termination of facility claims awarded in full. Insufficient evidence to support claims for discount on loan sales and foreign exchange compensation. For cancelled banknotes see paragraphs 27 to 31 of the report.
TOTAL	175,202,000	22,389,421	

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Kuwait Real Estate Bank K.S.C.
UNCC claim number: 4003299
UNSEQ number: E-00147

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	41,495	33,196	Claim adjusted for maintenance. See paragraphs 89 to 96 of the report.
Loss of cash	23,134	23,134	Claim awarded in full. See paragraphs 97 to 113 of the report.
Payment or relief to others	227,788	227,788	Claim reclassified to payment or relief to others and loss of profits. Claim awarded in full. See paragraphs 117 to 122 of the report.
Loss of profits	1,773,623	1,773,623	Original loss of contracts claim reclassified to loss of profits. Original loss of business transaction claim reclassified to loss of profits and other loss not categorised. Claim awarded in full. See paragraphs 123 to 135 of the report.
Bad debts	1,741,505	0	Insufficient evidence to substantiate claim. See paragraphs 54 to 70 of the report.
Restart costs	50,435	50,435	Claim awarded in full. See paragraphs 146 to 148 of the report.
Other loss not categorised	5,871,616	49,359	For foreign exchange losses see paragraphs 32 to 53 of the report. For cancelled banknotes see paragraphs 27 to 31 of the report. For foreign office expenses see paragraphs 75 to 77 of the report. For sale of assets see paragraphs 23 to 26 of the report.
TOTAL	9,729,596	2,157,535	

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Industrial Projects Co.
UNCC claim number: 4003781
UNSEQ number: E-00658

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	4,529,806	600,000	Original income producing property claim reclassified to loss of tangible property. Claim adjusted to reflect Net Book Value, to reflect write-off in post-liberation accounts, for depreciation and proceeds for sale of assets. See paragraphs 97 to 113 of the report.
TOTAL	4,529,806	600,000	

Claim preparation costs	4,706	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: The Public Authority of Minors Affairs
UNCC claim number: 4003901
UNSEQ number: E-00786

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	366,514	253,464	Claim reclassified to loss of real property, and profits. Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 89 to 96 of the report.
Loss of tangible property	316,335	221,434	Claim adjusted for depreciation and failure to repair/replace. See paragraphs 97 to 113 of the report.
Payment or relief to others	10,500	0	Original payment or relief to others claim reclassified to loss of profits. See paragraphs 117 to 122 of the report.
Loss of profits	4,892,134	1,479,433	Claim adjusted to reflect historical results. See paragraphs 123 to 135 of the report.
Restart costs	39,843	0	Insufficient evidence to substantiate claim. See paragraphs 146 to 148 of the report.
Other loss not categorised	193,969	0	Claim reclassified to payment or relief to others, profits, restart costs and other loss not categorised. For pre-paid rent see paragraph 161 of the report.
TOTAL	5,819,295	1,954,331	

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Commercial Facilities Company
UNCC claim number: 4004260
UNSEQ number: E-01152

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	4,195	2,842	Claim adjusted for maintenance. See paragraphs 89 to 96 of the report.
Loss of tangible property	7,275	7,275	Claim reclassified to loss of real property, tangible property and cash. Claim awarded in full. See paragraphs 97 to 113 of the report.
Loss of cash	159,000	0	Claim adjusted. See paragraphs 105 to 109 of the report.
Loss of profits	5,032,000	1,674,651	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 123 to 135 of the report.
Bad debts	3,308,332	224,052	Original loss of contracts claim reclassified to bad debts. Claim adjusted for evidentiary shortcomings. See paragraphs 136 to 145 of the report.
TOTAL	8,510,802	1,908,820	

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Kuwait Finance House K.S.C.
UNCC claim number: 4004275
UNSEQ number: E-01167

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,951,872	1,268,126	Claim adjusted for maintenance, variations and evidentiary shortcomings. See paragraphs 89 to 96 of the report.
Loss of tangible property	474,134	372,656	Claim reclassified to loss of tangible property, stock, cash, vehicles, income-producing property, restart costs and other loss not categorised. Claim adjusted for maintenance, depreciation, evidentiary shortcomings and failure to repair/replace. See paragraphs 97 to 113 of the report.
Loss of stock	4,384,279	2,786,160	Insufficient evidence to substantiate goods in transit claim. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 97 to 113 of the report.
Loss of cash	1,645,428	1,607,749	Insufficient evidence to substantiate claim for cash held by non banking sector. Cash stolen from branches and co-operative stores' cash awarded in full. See paragraphs 97 to 113 of the report.
Loss of vehicles	1,832	0	Insufficient evidence to substantiate claim. See paragraphs 97 to 113 of the report.
Payment or relief to others	228,997	0	Original restart costs reclassified to payment or relief to others. Insufficient evidence to substantiate claim. See paragraphs 117 to 122 of the report.
Loss of profits	37,490,853	0	Original contracts and payment or relief to others claims reclassified to loss of profits. See paragraph 132 of the report.
Bad debts	949,562	0	Insufficient evidence to substantiate claim. See paragraphs 136 to 145 of the report.
Restart costs	291,833	291,833	Claim awarded in full. See paragraphs 146 to 148 of the

			report.
Other loss not categorised	1,383,337	317,610	Claim reclassified to loss of tangible property, profits, restart costs and other loss not categorised. For cancelled banknotes see paragraphs 27 to 31 of the report. For foreign currency contract see paragraphs 32 to 53 of the report. For losses in connection with POS project see paragraphs 159 to 160 of the report.
TOTAL	48,802,127	6,644,134	

Claim preparation costs	24,835	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Bank of Kuwait and the Middle East K.S.C.
UNCC claim number: 4004598
UNSEQ number: E-01435

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	644,021	426,268	Original loss of contracts claim reclassified to loss of real property, profits and restart costs. Original real property claim reclassified to loss of real property, tangible property, profits and restart costs. Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 89 to 96 of the report.
Loss of tangible property	587,927	254,900	Claim reclassified to loss of tangible property, stock, cash and other loss not categorised. Claim adjusted for maintenance, depreciation, failure to repair/replace and evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of stock	75,000	20,625	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of cash	941,340	933,234	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Payment or relief to others	932,009	792,208	Claim reclassified to payment or relief to others and loss of profits. Claim adjusted for evidentiary shortcomings. See paragraphs 117 to 122 of the report.
Loss of profits	1,424,382	1,424,382	Claim awarded in full. See paragraphs 123 to 135 of the report.
Restart costs	909,705	244,491	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.
Other loss not categorised	6,683,937	0	Insufficient evidence and causation to substantiate claim for inexperienced tellers. For cancelled banknotes see paragraphs 27 to 31 of the report. For sale of assets see paragraphs 23 to 26 of the report.
TOTAL	12,198,321	4,096,108	

Claim preparation costs	49,900	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	1,555,362	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Jassim Al Wazzan Sons General Trading Company W.L.L.
UNCC claim number: 4004621
UNSEQ number: E-01538

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	674,579	539,859	Claim reclassified to loss of real property and tangible property. Claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 89 to 96 of the report.
Loss of tangible property	393,747	133,451	Claim reclassified to loss of tangible property, stock, vehicles and cash. Claim adjusted for depreciation, for maintenance and evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of stock	3,864,028	2,277,048	Claim adjusted for obsolescence, evidentiary shortcomings and stock build-up. See paragraphs 97 to 113 of the report.
Loss of cash	6,183	2,391	Claim adjusted for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of vehicles	72,837	37,600	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 97 to 113 of the report.
Loss of profits	757,825	353,352	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 123 to 135 of the report.
Bad debts	703,025	0	Insufficient evidence to substantiate claim. See paragraphs 136 to 145 of the report.
Restart costs	322,301	32,187	Claim reclassified to restart costs and other loss not categorised. Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.

Other loss not categorised	301,229	260,000	Claim for cancelled banknotes awarded in full. See paragraphs 27 to 31 of the report. Insufficient evidence to substantiate claim for key money. For claim for pre-paid rent see paragraph 161 of the report.
TOTAL	7,095,754	3,635,888	

Claim preparation costs	6,185	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II
Recommended awards for third instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Kuwait Insurance Company S.A.K.
UNCC claim number: 4004702
UNSEQ number: E-01594

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	0	0	See paragraphs 82 to 88 of the report.
Loss of tangible property	33,220	33,220	Claim awarded in full. See paragraphs 97 to 113 of the report.
Payment or relief to others	507,839	507,839	Claim awarded in full. See paragraphs 117 to 122 of the report.
Loss of profits	1,885,000	1,885,000	Claim awarded in full. See paragraphs 123 to 135 of the report.
Bad debts	254,546	0	Insufficient evidence to substantiate claim. See paragraphs 136 to 145 of the report.
Restart costs	22,197	8,006	Claim adjusted for evidentiary shortcomings. See paragraphs 146 to 148 of the report.
Other loss not categorised	315,705	0	Original loss of business transaction claim reclasssified to other loss not categorised. Insufficient evidence to substantiate claim. See paragraphs 23 to 26 of the report.
TOTAL	3,018,507	2,434,065	

Claim preparation costs	4,605	n.a.	Governing Council's determination pending. See paragraph 164 of the report.

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Coast Investment & Development Co. K.S.C. (Closed)
UNCC claim number: 4004851
UNSEQ number: E 01743

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of profits	4,989,609	1,953,508	Claim adjusted to reflect historical results. See paragraphs 123 to 135 of the report.
TOTAL	4,989,609	1,953,508	

Annex II

Recommended awards for third instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Investment Projects Company K.S.C.
UNCC claim number: 4004899
UNSEQ number: E-01826

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of profits	367,993	367,993	Original claim for payment or relief to others and restart costs reclassified to loss of profit. Claim awarded in full. See paragraphs 123 to 135 of the report.
Restart costs	473,878	262,039	Claim reclassified to loss of profit and restart costs. Claim adjusted to reflect amount of incremental expenses supported and for evidentiary shortcomings. For London and Bahrain expenses see paragraphs 75 to 77 of the report.
Other loss not categorised	3,646,355	0	Original loss of business transaction reclassified to other loss not categorised. For claim for sale of assets see paragraphs 23 to 26 of the report. Insufficient evidence to support claim for foreign exchange losses.
TOTAL	4,488,226	630,032	

Claim preparation costs	7,600	n.a.	Governing Council's determination pending. See paragraph 164 of the report.
Interest	595,247	n.a.	Governing Council's determination pending. See paragraph 163 of the report.

Annex III

Correction of first and second instalment claims

(i) Correction of first instalment claim

1. During the review of the fourth instalment of "E2" claims it became apparent that an "E2" claimant, Swordsman Australia (UNCC Claim Number 4000017), had raised a claim for loss of goods in transit in respect of the same subject matter as a goods in transit claim raised by Al Bahar and Bardawil for Private Material Co. W.L.L. ("Al Bahar") in the first instalment of "E4" claims.

2. Following correspondence with the Commission on this issue, and in order to avoid a double recovery, Al Bahar has agreed that the total amount awarded to it in respect of such goods in transit claim be deducted from its total award.

3. The following table identifies the corrected claim award for the first instalment claim of Al Bahar.

Table 1. First instalment "E4" claims correction

Claimant name	UNCC claim No.	UNSEQ claim No.	Total claim award reported in annex I (US$)	Corrected total claim award (US$)
Al Bahar and Bardawil for Private Material Co. W.L.L.	4000758	E-00092	959,398	919,758

(ii) Correction of second instalment claims

1. The loss of profit portion of two awards, correctly reported in Kuwaiti dinars in annex II of the Panel's "Report and Recommendations on the Second Instalment of "E4" Claims" (S/AC.26/1999/17), was omitted from the amounts recommended in United States dollars in annex I of that report. The following table identifies the corrected total claim awards in United States dollars for the two claims in the second instalment.

Table 2. Second instalment "E4" claims corrections

Claimant name	UNCC claim No.	UNSEQ claim No.	Total claim award reported in annex I (US$)	Corrected total claim award (US$)
Dashti & Sayegh General Trading & Contracting Co	4003305	E-00168	2,343,529	2,591,970
Al-Fardous Co-Operative Society	4000788	E-00153	1,286,080	1,613,792